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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

REGINALD D. MILLER,

Plaintiff and Appellant,

v.

MATTHEW CATE et al.,

Defendants and Respondents.

F066067

(Super. Ct. No. 11CECG01623)

OPINION

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. Mark Wood Snauffer, Judge.

Reginald D. Miller, in pro. per., for Plaintiff and Appellant.

Gutierrez, Preciado & House and Calvin House for Defendants and Respondents.

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This case is another example of the difficulty defendants face when they file a demurrer that asserts a cause of action is time-barred by (1) a statute of limitations or (2)

[*] Before Cornell, Acting P.J., Poochigian, J. and Franson, J.

the plaintiff's failure to present a timely claim form to the public entity defendant as required by California's Government Claims Act (Gov. Code, § 810 et seq.).[1]

The application of either type of time bar requires the court to identify when the cause of action *accrued*. Unfortunately for demurring defendants, California's pleading rules do not require plaintiffs to allege specific facts that establish (1) the date when the last of the essential elements of a cause of action occurred, which is generally regarded as the date of accrual, or (2) whether an exception or modification of the "last element" accrual rule applies. Consequently, courts reviewing a demurrer often face a situation where the complaint's allegations lack sufficient information to identify when the cause of action accrued and, consequently, whether a lawsuit or claim form was timely. Where the time bar does not clearly and affirmatively appear on the face of the complaint and matters judicially noticed, the court must overrule the demurrer. (*Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 420.) In other words, when the relevant facts are not clear and show that the cause of action might be, but is not necessarily, subject to a time bar, the demurrer will be overruled.

The questions presented in this appeal include (1) what are the accrual dates of plaintiff's causes of action against the public defenders who represented him in a civil commitment proceeding brought under the Sexually Violent Predator Act (SVPA)[2] and (2) whether any of those accrual dates might have fallen within six months of the plaintiffs' submission of a claim form to the County of Los Angeles. (See § 911.2, subd. (a) [claim must be presented "not later than six months after the accrual of the cause of action."].)

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[1] All further statutory references are to the Government Code unless otherwise stated. This act was formerly referred to as the "Tort Claims Act." (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 742.)

[2] The SVPA is codified at Welfare and Institutions Code section 6600 et seq.

With the foregoing issues in mind, we have reviewed the pleadings and matters subject to judicial notice and concluded that the information available at this stage of the litigation is insufficient to decide the issues in defendants' favor. Untimeliness, though possible, does not clearly and affirmatively appear on the face of the complaint and matters judicially noticed. Thus, the demurrer should have been overruled.

We therefore reverse the judgment of dismissal.

FACTS AND PROCEEDINGS

Parties

Plaintiff Reginald Miller is being held at the Coalinga State Hospital as a result of a civil commitment proceeding under the SVPA. This appeal concerns Miller's claims against two public defenders who represented him in the civil commitment proceeding.

Defendant Steve McManus is a deputy public defender who worked in the SVP unit of the Los Angeles County Public Defender's Office. McManus was assigned to represent Miller in the proceeding that sought to have Miller committed as a sexually violent predator.

Defendant Michael Suzuki is the supervising deputy public defender of the SVP unit with the Los Angeles County Public Defender's Office. Miller alleges that Suzuki was responsible for seeing that only competent counsel was assigned to his case and that Suzuki violated this responsibility by allowing McManus to continue to represent Miller at various stages of the commitment proceeding, including the administrative level before the California Department of Corrections and Rehabilitation (CDCR).

Representation During Civil Commitment Proceeding

In 1994, Miller was sentenced to a determinate term of 25 years in prison for forcible rape and residential robbery. Miller alleges he should have been released on January 14, 2006, when he was placed on parole. Instead, Miller alleges he was held in custody unlawfully at the Coalinga State Hospital.

Miller's amended complaint does not state when McManus was assigned to Miller's civil commitment proceeding. However, in his July 2012 opposition to the demurrer Miller "acknowledges that he identified January 14, 2006 as the date the 'damage or injury occurred' which is accurate as it refers to the assignment of Defendants McManus and Suzuki to his case."

Miller alleged that (1) from the onset of McManus's assignment to his case, Miller continuously referred to constitutional violations that had occurred at the level of the CDCR and Board of Parole Hearings; (2) McManus's attitude was less than lackluster and McManus asserted it was too late to pursue those avenues; and (3) McManus did not step up and file the motion to dismiss for unlawful custody requested by Miller until after Miller filed two petitions for writ of habeas corpus (each of which was summarily denied).

Miller's amended complaint also includes the following allegations: On June 4, 2010, McManus filed a "Motion to Dismiss for Unlawful Custody" that contended Miller had been unlawfully held since January 14, 2006. The motion to dismiss was never heard, no witnesses were called or heard, and the motion was not ruled upon based on the merits. The motion to dismiss "was denied without the panoply of a full hearing …." McManus "has repeatedly refused to file an appeal of the decision of the Honorable Judge Henry Shabo simply stating that, '*The Appellate Department [of the Public Defender's Office] was unable to find any issue that can be raised on appeal.*'" When there was less than 21 days to file a notice of appeal, McManus left the pursuit of any appeal, including preparation of the necessary documents, in Miller's hands.

Miller's Claim Form

Miller filed a claim form dated January 17, 2011, with the County of Los Angeles. On January 24, 2011, the claim form was stamped "filed."

The claim form asks "WHEN DID DAMAGE OR INJURY OCCUR" and Miller entered "01/14/2006"[3] in the date box and "9:00 a.m." in the time box. Miller described how the damage or injury occurred by completing box 7 of the form as follows:

> "Violation of claimant's constitutional right to Due Process and Equal Protection mandates by failing to contest the application of the SVPA process knowing that notice and appeal rights had been denied at the administrative level. Claimant contends that attorney acted in collusion with prosecutors in this process to deny his rights. Malpractice."

In box 13 of the claim form, which concerns "DAMAGES INCURRED TO DATE," Miller asserted he "has suffered physically, emotionally and mentally as the result of continued confinement in a State Hospital against these violations."

The County of Los Angeles responded to Miller's claim form by sending him a letter dated February 1, 2011, that stated his claim was "being returned as it was not timely filed. [¶] A preliminary review of this matter indicates that your claim was filed more than one year from the date of the accrual of your cause of action." The letter stated that a late application under section 911.4 could not be considered and, therefore, no further action would be taken on his claim. In effect, the County treated the date Miller entered on the claim form as when damage or injury occurred as the date of "the accrual of the cause of action" for purposes of sections 911.2 and 911.4.

The Lawsuit

In May 2011, Miller filed an amended complaint against certain prison officials, two psychologists with the Department of Mental Health who evaluated Miller in connection with the commitment proceeding under the SVPA, and the public defenders. At page 32 of the amended complaint, Miller alleged a claim was duly filed with the

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[3] January 14, 2006, is the date (1) the amended complaint gives as the start of Miller's unlawful custody and (2) Miller's opposition to the demurrer identifies as the date McManus and Suzuki were assigned to his case.

County of Los Angeles (Claim No. 11-1086003*001) and that the County denied his claim on February 1, 2011.

In July 2011, the defendants removed the lawsuit to federal court and then filed motions to dismiss with the federal court. After the motions to dismiss the federal claims were granted, Miller's state law claims against McManus and Suzuki were remanded to the Fresno County Superior Court for further proceedings.

In June 2012, McManus and Suzuki filed a demurrer, asserting that Miller's amended complaint failed to state facts sufficient to constitute a cause of action because it failed "to allege timely compliance with the filing requirement of the Tort Claims Act." The memorandum of points and authorities in support of the demurrer represented to the trial court that (1) the legal malpractice and negligence was "supposedly committed in 2006" and (2) Miller's claim form was not filed until 2011. Based on this view of the facts, defendants contended that Miller's lawsuit clearly was time-barred under section 911.4.

Miller's written opposition to the demurrer acknowledged that his claim form did identify January 14, 2006, as the date the "damage or injury occurred" and argued that the alleged malpractice and malfeasance in the handling of his civil commitment *began* on January 14, 2006, and *continued* to date.

The written reply filed by McManus and Suzuki asserted the continued representation of Miller after January 14, 2006, might be a basis for tolling the statute of limitations for a legal malpractice action against a nongovernmental defendant, but did not operate to toll or delay the deadline for filing a governmental claim.

On September 24, 2012, the trial court filed a minute order that stated:

> "Miller alleges that he is confined in Coalinga State Hospital against his will because of the legal malpractice of … McManus and the negligence of … Suzuki, supposedly committed in 2006. However, [Miller] did not file his claim under the California Tort Claims Act until 2011. [Miller's] action is therefore time barred under Government Code § 911.4, [as] beyond the

point at which a late claim application could have been considered. The Court sustains McManus and Suzuki's demurrer without leave to amend, as [Miller's] complaint cannot be amended to save the action."

In October 2012, Miller filed a notice of appeal.

DISCUSSION

I. STANDARD OF REVIEW APPLICABLE TO DEMURRERS

A. General Principles

When a trial court sustains a demurrer on the ground that the complaint does not state facts sufficient to constitute a cause of action, the appellate court conducts a de novo review—that is, it independently decides whether the allegations are sufficient. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

When conducting this de novo review, "[w]e give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] Further, we treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusions of law. [Citations.]" (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.) We also consider matters that have been judicially noticed. (Code Civ. Proc., § 430.30, subd. (a) [use of judicial notice with demurrer].)

B. Pleading Compliance with the Claims Requirement

The claims presentation requirement contained in the Government Claims Act, which is a condition precedent to maintaining a cause of action against a public entity, is treated as an element of the plaintiff's cause of action. (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1240.) As a result, the "failure to allege facts demonstrating or excusing compliance with the claim presentation requirement subjects a claim against a public entity to a demurrer for failure to state a cause of action." (*Id.* at p. 1239.) The California Supreme Court did not elaborate on this statement and, as a result, (1) did not identify the facts that must be alleged to demonstrate compliance and (2) did

not explicitly authorize or prohibit a general allegation of compliance with the claim presentation requirement.

In *Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, this court addressed the issues not reached by the California Supreme Court and concluded "that a plaintiff may allege compliance with the claims presentation requirement in the Government Claims Act by including a general allegation that he or she timely complied with the claims statute." (*Id*. at p. 1237, fn. omitted.) Our conclusion that a general allegation is sufficient is consistent with the approach taken in item 9 on page 2 of Judicial Council Form PLD-PI-001 (rev. Jan. 1, 2007), which allows a plaintiff to allege compliance simply by checking boxes stating: "Plaintiff is required to comply with a claims statute, **and** [¶] … has complied with applicable claims statutes …."

C. Specific Rules Applicable to Demurrer Asserting Time Bars

Last year, in *Coalition for Clean Air v. City of Visalia*, *supra*, 209 Cal.App.4th 408, this court stated:

> "Sometimes, it is difficult for demurrers based on the statute of limitations to succeed because (1) trial and appellate courts treat the demurrer as admitting all material facts properly pleaded and (2) resolution of the statute of limitations issue can involve questions of fact. Furthermore, when the relevant facts are not clear such that the cause of action might be, but is not necessarily, time-barred, the demurrer will be overruled…. Thus, for a demurrer based on the statute of limitations to be sustained, the untimeliness of the lawsuit must clearly and affirmatively appear on the face of the complaint and matters judicially noticed…." (*Id*. at p. 420, fns. and citations omitted.)

These statements apply with equal force to demurrers that assert a cause of action cannot be pursued in a lawsuit because of the failure to submit a timely claim form under the Government Claims Act. (See § 901 [date of accrual is the same as accrual for purposes of statute of limitations].)

II. TIMELY PRESENTATION OF A CLAIM TO A LOCAL PUBLIC ENTITY

A. Written Claim Requirement

California's Government Claims Act states that "all claims for money or damages against local public entities" must be "presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) …." (§ 905; see Code Civ. Proc., § 313.)

A claim relating to a cause of action for personal injury must be presented to the public entity "not later than six months after the accrual of the cause of action." (§ 911.2, subd. (a).) If a claim is not presented within this six-month period, the claimant has an additional six-month period in which to make a written application to the public entity for leave to present a late claim. (§ 911.4, subds. (a) & (b).)[4] The time bar created by section 911.2 also applies to personal injury lawsuits brought against public employees for acts or omissions in the scope of their employment. (§ 950.2.)

The concept of "the accrual of the cause of action," which is the centerpiece of this appeal, determines the point at which the first of the consecutive six-month periods start to run.[5] The Government Claims Act does not directly define "accrual" or "date of the accrual." Instead, section 901 refers courts and practitioners to another body of law:

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[4] A threefold rationale underlies the requirement for giving public entities written notice of a claim before a lawsuit is filed. First, it provides the public entity with sufficient information to enable it to perform an adequate investigation of the claim and, if appropriate, settle it without the expense of litigation. (*Stockett v. Association of Cal. Water Agencies Joint Powers Ins. Authority* (2004) 34 Cal.4th 441, 446.) Second, the written claim informs the public entity of potential liability so it can better prepare its budget for the upcoming fiscal year. (*Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776.) Third, in certain situations, the claim provides the public entity an opportunity to fix a dangerous condition or harmful situation and avoid further injuries. (*San Diego Unified Port Dist. v. Superior Court* (1988) 197 Cal.App.3d 843, 847.)

[5] Besides triggering the statute of limitations, the accrual of a cause of action also marks the earliest point in time that a cause of action may be filed in court. (See Code Civ. Proc., §§ 312 [civil action can be commenced only after cause of action has accrued] & 350 [an action is commenced when the complaint is filed].) In other words, a

> "For the purpose of computing the time limits prescribed by Sections 911.2 [and] 911.4 …, the *date of the accrual of a cause of action* to which a claim relates is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if there were no requirement that a claim be presented to and acted upon by the public entity before an action could be commenced thereon." (Italics added.)

Based on section 901, we will rely on cases discussing the accrual and "deemed" accrual of a cause of action for statute of limitations purposes in deciding when a cause of action accrues for purposes of the Government Claims Act.

B. Basic Rules Governing the Accrual of a Cause of Action

1. The Last Element Accrual Rule

California follows the general rule that a cause of action "accrues" when it is complete with all of its elements. (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.) In other words, accrual happens, and the limitations period begins to run, on the occurrence of the last essential element of the cause of action. (*Ibid.*) This general rule has been called "the 'last element' accrual rule" and the elements have been described generically as wrongdoing, harm and causation. (*Ibid.*)

2. Modification for Legal Malpractice Claims

The "last element" accrual rule has been modified for situations involving multiple acts of legal malpractice. In *Pointe San Diego Residential Community, L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP* (2011) 195 Cal.App.4th 265, 274, the court stated:

> "[W]here a plaintiff sues a defendant for legal malpractice alleging several distinct acts of malpractice with respect to a single representation, a demurrer is properly granted on the basis of the statute of limitations only if *each* alleged act of malpractice is time-barred. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682 [reversing demurrer sustained to

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controversy is ripe when all the elements of a cause of action have occurred. (*Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co.* (2004) 116 Cal.App.4th 1375, 1388.)

legal malpractice cause of action because plaintiff timely alleged at least one negligent act].)"

III. ANALYSIS OF PLAINTIFF'S ALLEGATIONS

A. Date of Presentation of Plaintiff's Claim

Miller's amended complaint alleged that his claim was "duly filed" with the County of Los Angeles (Claim No. 11-1086003*001) and that the County denied his claim on February 1, 2011. To support this allegation, he attached a copy of the County's February 1, 2011, letter. That letter indicates that Miller's claim form was filed on January 20, 2011, a date that we will accept for purposes of this appeal.[6]

B. Application of Six-Month Periods in Sections 911.2 and 911.4

Pursuant to subdivision (a) of section 911.2, a claim "shall be presented … not later than six months after the accrual of the cause of action." Applying this six-month period to the presentation date of January 20, 2011, and working backwards produces a date of July 20, 2010. Thus, if Miller's malpractice causes of action accrued on or after July 20, 2010, the claim form was timely.

In addition, pursuant to section 911.4, a claimant has another six-month period to submit an application to present a late claim. Thus, if Miller's malpractice cause of action accrued between January 20, 2010 and July 19, 2010, he could have filed an application to present a late claim.

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[6] Miller's claim was submitted on the preprinted form adopted by the County of Los Angeles and Miller's signature on the form was dated January 17, 2011. The claim form itself is stamped "FILED" with the Board of Supervisors on January 24, 2011. For purposes of this appeal, we need not decide whether the prison-delivery rule applies to claim forms submitted under the Government Claims Act. (See *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106 [prison-delivery rule applied to a self-represented prisoner's filing of a notice of appeal in a civil case; document is deemed constructively filed when delivered to prison authorities pursuant to the procedures established for prisoner mail]; *In re Jordan* (1992) 4 Cal.4th 116 [notice of appeal in criminal case is deemed timely filed if delivered to prison officials within 60-day filing period].)

Based on the date Miller presented his claim form to the County of Los Angeles and the application of the six-month period in subdivision (a) of section 911.2, the critical question in this appeal is whether any of Miller's malpractice claims accrued on or after July 20, 2010.

C. Defendants' Contentions Regarding the Failure to Appeal

The initial focus of defendants' demurrer concerned a single act of alleged legal malpractice of each defendant—namely, McManus's failure to abide by Miller's wishes and appeal the superior court's handling of the motion to dismiss for unlawful custody and Suzuki's failure to remove McManus after this malpractice. Defendants may have chosen the failure to appeal because, from a timing perspective, it appears to be last distinct act of malpractice mentioned in Miller's amended complaint and defendants may have been aware of the principle set forth in *Pointe San Diego Residential Community, L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP*, *supra*, 195 Cal.App.4th at page 274, which we quoted in part II.B.2, *ante*.

Defendants' memorandum of points and authorities in support of the demurrer asserted:

> "Plaintiff's alleged injury occurred on January 14, 2006 when Defendant Deputy Public Defender McManus did not file an appeal challenging the court's decision not to hear his Motion to Dismiss, in spite of Plaintiff's instruction that [McManus] do so, thereby allegedly committing malpractice …." (Fn. omitted.)

Two paragraphs later, the memorandum analyzed the timing of this alleged malpractice and the filing of the claim form with Los Angeles County as follows:

> "If the injury occurred as Plaintiff alleges, when McManus disobeyed his instructions to file an appeal on January 14, 2006 and Suzuki did not provide him with a different Public Defender, the deadline for Plaintiff to file his claim would have been six months later – July 14, 2006. Plaintiff thereafter could have filed an Application to File a Late Claim within a year of the accrual of his cause of action (by January 14, 2007). Plaintiff did not file his tort claim until January 20, 2011."

It is well established that courts must give the allegations in a complaint a reasonable interpretation. (E.g., *Zhang v. Superior Court* (2013) 57 Cal.4th 364, 369; *City of Dinuba v. County of Tulare*, *supra*, 41 Cal.4th at p. 865.) Indeed, the California Legislature explicitly adopted a rule of liberal construction in Code of Civil Procedure section 452, which provides in full: "In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties." This rule of liberal, yet reasonable, construction means that the reviewing court draws inferences favorable to the plaintiff, not the defendant. (*Carney v. Simmonds* (1957) 49 Cal.2d 84, 93; *Advanced Modular Sputtering, Inc. v. Superior Court* (2005) 132 Cal.App.4th 826, 835 ["pleadings are to be liberally construed in favor of the pleader"].)

Defendants' above-quoted arguments present the question whether defendants have given the allegations in Miller's amended complaint a reasonable interpretation. Specifically, defendants interpreted Miller's amended complaint as alleging that McManus committed malpractice by disobeying Miller's "instructions to file an appeal on January 14, 2006." This interpretation is unreasonable when the complaint is read as a whole.

Page 23 of the amended complaint clearly alleges that the "Motion to Dismiss for Unlawful Custody" was filed on or about June 4, 2010, and that the motion contended Miller had been unlawfully held since January 14, 2006. Page 24 of the amended complaint alleges that McManus repeatedly refused to file an appeal of the decision of the Honorable Judge Henry Shabo—an appeal we must infer is related to that judge's handling of the motion to dismiss. The amended complaint makes no allegations as to when Miller made his repeated requests to McManus to appeal the trial court's handling of the motion to dismiss, therefore, we must draw a reasonable inference regarding when Miller's requests and McManus's last refusal occurred. The most reasonable inference is that the requests and the refusals occurred sometime *after* the motion to dismiss was

filed—that is, sometime after June 4, 2010. Here, defendants did not draw this inference. Instead, they unreasonably inferred that McManus's refusals occurred in January 2006—four and a half years *before the motion to dismiss was filed*.

Our interpretation of the amended complaint as necessarily implying that McManus's refusals to file an appeal[7] occurred after June 4, 2010, does not provide enough information to resolve with finality the timeliness of Miller's presentation of the claim form. For the claim to have been timely, McManus's last refusal would have had to occur within the six-month period set forth in section 911.2, subdivision (a), a period that reaches back only to July 20, 2010. Precisely when McManus last refused to file the appeal does not clearly and affirmatively appear on the face of the complaint and matters judicially notice. (*Coalition for Clean Air v. City of Visalia*, *supra*, 209 Cal.App.4th at p. 420.) Miller alleged the motion to dismiss was filed on June 4, 2010, but did not allege (1) when the motion was heard, (2) when the trial court denied the motion, or (3) when McManus informed Miller that he would not appeal the trial court's denial. Miller did allege there were less than 21 days to file a notice of appeal when McManus left the pursuit of any appeal in Miller's hands. The allegation about a 21-day interval, however, does not help establish when McManus's last refusal occurred.

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[7] A public defender's obligation to file an appeal was addressed over 30 years ago by the United States Supreme Court in the context of a prisoner's civil rights lawsuit: "It is the obligation of any lawyer—whether privately retained or publicly appointed—not to clog the courts with frivolous motions and appeals." (*Polk County v. Dodson* (1981) 454 U.S. 312, 323; see *Tower v. Glover* (1984) 467 U.S. 914 [pro se prisoner alleged public defender conspired with state officials to deprive him of his federal constitutional rights].) Whether McManus's refusal to file the appeal fell below the standards of competent legal representation is not a question raised by the demurrer, which asserted only the ground that Miller's presentation of the claim form was untimely. Thus, the principle that a trial court's ruling will be upheld if *any ground stated in the demurrer* is well taken (*Muraoka v. Budget Rent-A-Car, Inc.* (1984) 160 Cal.App.3d 107, 115) does not require this court to consider other grounds on which the order sustaining the demurrer might be upheld.

Based on the available information, we only can say that the last refusal to appeal might, or might not, have occurred more than six months before Miller presented his claim form to the County of Los Angeles. Because of this uncertainty, the demurrer cannot be sustained on defendants' theory that the refusals to appeal occurred in 2006 or, alternatively, occurred after June 4, 2010, and before July 20, 2010. In other words, the question of the timing of the refusals presents a question of fact that cannot be resolved against the plaintiff at the pleading stage of this lawsuit.

D. Defendants' Contention Equating First Injury with Accrual

On appeal, defendants note that Miller alleged he was injured at 9:00 a.m. on January 14, 2006, a date more than five years before he presented his claim form to the County of Los Angeles. Defendants imply that this date of first injury also was the date Miller's causes of action accrued for purposes of the Government Claims Act and argue that Miller did not present a timely claim under section 911.2 or file a timely application to present a late claim under section 911.4.

In response, Miller argues that the January 14, 2006, date entered on his claim form simply identified the first day the legal malpractice and negligence began and that the malpractice and related harm of his unlawful custody is continuing.

Defendants' theory that the entirety of Miller's legal malpractice cause of action accrued on the date of his first injury is contrary to the principle set forth in *Pointe San Diego Residential Community, L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP*, *supra*, 195 Cal.App.4th at page 274:

> "[W]here a plaintiff sues a defendant for legal malpractice alleging several distinct acts of malpractice with respect to a single representation, a demurrer is properly granted on the basis of the statute of limitations only if *each* alleged act of malpractice is time-barred. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682 [reversing demurrer sustained to legal malpractice cause of action because plaintiff timely alleged at least one negligent act].)"

Based on this principle and section 901, we conclude that it is possible that McManus's alleged legal malpractice in failing to file an appeal of the superior court's handling of the motion to dismiss marks the accrual of a legal malpractice claim. As previously discussed, that act or omission of alleged malpractice may have occurred within the six-month period set forth in section 911.2 and, consequently, Miller's claim form may have been timely. Because the untimeliness of the claim form does not clearly and affirmatively appear on the face of the complaint and matters subject to judicial notice, the demurrer cannot be sustained on defendants' theory that the date of the first injury also is the date of accrual for purposes of the Government Claims Act.

DISPOSITION

The judgment of dismissal is reversed. The trial court is directed to file a new order vacating its September 24, 2012, order sustaining the demurrer without leave to amend and overruling the demurrer. Plaintiff shall recover his costs on appeal.